1 2 3 4 5 IN THE UNITED STATES DISTRICT COURT 6 7 FOR THE DISTRICT OF ARIZONA 8 No. CV-22-01063-PHX-SPL Wade Aaron Limehouse, 9 Petitioner, **ORDER** 10 VS. 11 David Shinn, et al., 12 Respondents. 13 14 Petitioner Wade Aaron Limehouse has filed an Amended Petition for Writ of 15 Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 4). The Honorable Michael T. 16 Morrissey, United States Magistrate Judge, issued a Report and Recommendation ("R&R") 17 (Doc. 17), recommending that the Court deny the Petition. Judge Morrissey advised the 18 19 parties that they had fourteen (14) days to file objections to the R&R and that failure to file timely objections could be considered a waiver of the right to obtain review of the R&R. 20 (Doc. 17 at 7–8) (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72; *United States v. Reyna-*2.1 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)).¹ 22 The parties did not file objections, which relieves the Court of its obligation to 23 24 25 ¹ Petitioner filed a notice of appeal from the Report & Recommendation (Doc. 18). Because that order is patently not appealable, it does not deprive this Court of jurisdiction to rule on the Report & Recommendation. See Nascimento v. Dummer, 508 F.3d 905, 908 (9th Cir. 2007) ("When a Notice of Appeal is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction to the appellate court, and so the ordinary rule that the district court cannot act until the mandate has issued on the appeal 26 27

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does not apply.").

review the R&R. See Reyna-Tapia, 328 F.3d at 1121; Thomas v. Arn, 474 U.S. 140, 149 (1985) ("[Section 636(b)(1)] does not . . . require any review at all . . . of any issue that is not the subject of an objection."); Fed. R. Civ. P. 72(b)(3) ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to."). The Court has nonetheless reviewed the R&R and finds that it is well-taken. The Court will adopt the R&R and deny the Petition. See 28 U.S.C. § 636(b)(1) (stating that the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate"); Fed. R. Civ. P. 72(b)(3) ("The district judge") may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions."). Accordingly, IT IS ORDERED: 1. That Magistrate Judge Michael T. Morrissey's Report and Recommendation (Doc. 17) is **accepted** and **adopted** by the Court; 2. That the Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 4) is **denied** and **dismissed with prejudice**;

- 3. That a certificate of appealability and leave to proceed *in forma pauperis* on appeal are **denied**; and
 - 4. That the Clerk of Court shall **terminate** this action. Dated this 22nd day of March, 2023.

Honorable Steven P. Løgan United States District Judge

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